

History

Twenty-five years of courtroom trauma

Compiled by Jim Schroeder

Drag performers with names like Michelle Mouth, sex-change dads, transvestite civil servants, and Twinkie-crazed politicians: It's the job of the legal system to give serious scrutiny to the topics that daytime talk shows play for ratings. Americans love to litigate almost as much as they love to talk about sex, and when those two passions collide, the results can be frustrating or uplifting, heartbreakingly tragic or unintentionally hilarious. In the 25 years since the Stonewall riots, America's attitude about sex has changed dramatically, as has the legal environment surrounding sex. As our informal, admittedly incomplete, and sometimes irreverent review of the past quarter century of legal developments in the world of sex shows, sometimes the law breaks down stereotypes and leads us to a new respect for sexual diversity. But more often it is we who lead and the law that follows.

In the most controversial bar raid ever, New York City police raid the Stonewall Inn, a gay bar in Greenwich Village, setting off three days of rioting by gays, lesbians, drag queens, and street people. It was the sixth raid of a gay bar in New York City in three weeks. The disturbance, in which rioters pelted officers with stones and parking meters, is credited with sparking the modern gay rights movement.

In *Stanley v. Georgia* the Supreme Court rules that states cannot outlaw possession of pornography at home

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for private use. A home, the Court rules, is part of its occupant's "zone of privacy."

A federal appeals court in Washington, D.C., grapples with questions regarding the rights of civilians who work for and with the government. In *Adams v. Laird* the denial of a security clearance to an openly gay employee of a defense contractor is upheld. In *Norton v. Macy*, however, the court reinstates a civilian National Aeronautics and Space Administration employee who was forced to resign after his supervisors learned he was accused of picking up a man in a park for sex.

In *Morrison v. State Board of Education*, the California supreme court rules that engaging in same-sex intercourse doesn't automatically make one unfit to teach.



Nixon

President Richard Nixon's blue-ribbon commission on obscenity and pornography, chaired by former University of Minnesota law school dean William Lockhart, finds no link between the use of sexually explicit material and criminal conduct, sexual deviance, or emotional disturbances

In *Baker v. Nelson* the Minnesota supreme court upholds the rejection of a gay couple's application for a marriage license. The couple argue that the state's refusal to issue them the license violates their right to equal treatment under the law. The court acknowledges that state law does not explicitly forbid same-sex marriages but rules that there are plenty of instances in which it refers to wives as women and husbands as men.

The National Organization for Women (NOW) approves its first resolu-

The Senate approves the Equal Rights Amendment (ERA), which would prohibit gender-based discrimination, and sends the measure to the states for ratification. At first it's thought that passage of the ERA will be a breeze, but in the end enough state legislatures are persuaded by Eagle Forum founder Phyllis Schlafly and other conservative organizers to withhold their OK that the amendment dies. Many of the right-wingers then turn their attention to fighting gay rights protections.

In *Stanley v. Illinois* the Supreme Court rules

In *Roe v. Wade* the Supreme Court rules that constitutional privacy rights include a woman's right to a first-trimester abortion. Gay rights supporters express hope that the Court will use the broad definition of privacy it embraced in *Roe* to overturn existing sodomy laws.

The Supreme Court dramatically restricts the availability of sexually explicit material with rulings in *Miller v. California* and *Paris Adult Theater I v. Slaton*. In decisions written by Chief Justice



Abzug

A bill that would prohibit antigay discrimination across the country is introduced in the House of Representatives but gets little response from lawmakers. Twenty years later its main sponsors, New York Democrats Bella Abzug

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among youths or adults. Nixon and congressional leaders vehemently reject the commission's conclusions, and Nixon angrily disbands the panel.

In *Buchanan v. Bachelor* a federal appeals court panel declares that Texas's felony sodomy law, which applies to both heterosexuals and homosexuals, violates constitutional free-expression guarantees. The Texas legislature eventually replaces the statute with one that makes same-sex sodomy a misdemeanor.

The country's first legislative hearings on gay rights, convened by New York State assemblymen Franz Lichter, Anthony Olivieri, and Stephen Solarz, are held in New York City.

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tion supporting lesbian rights. A similar resolution was introduced the previous year but was withdrawn after it was attacked by NOW founder Betty Friedan.



Friedan

In *Younger v. Harris* the Supreme Court rules that a state law cannot be challenged in federal court by people who had not previously been indicted, arrested, or credibly threatened under it. The decision scuttles a nascent federal appeal of the *Buchanan v. Bachelor* ruling and complicates other sodomy-law cases.

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that unwed fathers cannot automatically be assumed to be unfit parents. The ruling will often be cited by gay and lesbian parents in child custody disputes.

East Lansing, Mich., becomes the first city in the United States to ban antigay bias.

In *People v. Triggs* the California supreme court rules that routine police spying on public rest rooms violates the privacy rights of patrons. Police had been using the practice to catch gay men having sex.

John Wojtowicz robs a bank in Manhattan to pay for his boyfriend's sex-change operation. The incident becomes the basis for the Sidney Lumet film *Dog Day Afternoon*.

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Warren Burger, the Court drops its national standard for defining obscenity, which had been in use since the '50s, in favor of one that allows communities to define obscenity according to local standards. For the first time, works not considered obscene in one locality may be considered obscene in other localities.

Lambda Legal Defense and Education Fund is formed as a nonprofit gay rights legal group in New York City. The group is initially denied permission to incorporate and is subsequently forced to obtain a court order to do so.

In *In re Kimball* the New York State court of appeals orders the admission of an openly gay attorney to the bar. It's said to be the first time any state bar had ever admitted an openly gay person.

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and Edward Koch, are long out of office, and the House has yet to act on their bill.

Federal appeals courts deal with a rash of cases involving sexuality and public education. In *Acanfora v. Board of Education of Montgomery County*, the dismissal of a teacher for advocating gay rights is overturned. In *Gay Students Organization of the University of New Hampshire v. Bonner*, an attempt to stop a gay student group from having parties is blocked. But in *In re Grossman*, the dismissal of a tenured elementary school teacher who changed his sex is upheld.

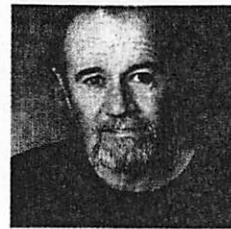
In *Singer v. Hara* a Washington State appeals court rules that the state's approval of the ERA doesn't authorize same-sex marriage.

In *Doe v. Commonwealth's Attorney for the City of Richmond*, a federal appeals court panel rejects a challenge to Virginia's sodomy law. The Supreme Court refuses without comment to consider an appeal of the ruling, making the *Doe* decision the federal court's authoritative word on sodomy laws until the Supreme Court's *Bowers v. Hardwick* decision in 1986.

Ex-marine Oliver Sipple sues 50 publishers for invasion of privacy after media reports reveal

In *Marvin v. Marvin*, a palimony lawsuit that captured the nation's attention, the California supreme court rules that contract law may be applied to the breakup of heterosexual domestic partnerships. The lawsuit was filed by Michelle Marvin, the longtime lover of actor Lee Marvin, who asserted that she had an understanding with Marvin that they would share their assets. The actor unsuccessfully argued that the nonmarital nature of their relationship made the agreement invalid. In its decision the court doesn't address

In *Richards v. United States Tennis Association*, a New York State superior court rules that transsexual tennis player Renee Richards may play in women's competition in the U.S. Open tennis tournament.



Carlin

In *Federal Communications Commission v. Pacifica Foundation*, the Supreme Court OK's restrictions on the broadcast of material that is indecent but not obscene. The case involves a sexually explicit routine by comedian George Carlin but will also be used to block

In *DeSantis v. Pacific Telephone & Telegraph Co.*, a federal appeals court rules that antigay bias is not a form of sex discrimination. The case was the most concerted effort to apply sex-discrimination laws to antigay bias—and the judicial system's most ringing rejection of the idea.

California governor Jerry Brown appoints attorney Stephen Lachs to a state judgeship, making him the nation's first openly gay judge.

In *Gay Law Students Association v. Pacific Tele-*

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that he's gay. Sipple became a hero after saving President Gerald Ford's life by knocking aside would-be assassin Sara Jane Moore in San Francisco. When members of Sipple's family—who didn't know about his sexual

BETTMANN-UPI



Ford

orientation—saw the media reports, they disowned him.

Santa Cruz County, Calif., becomes the first U.S. county to ban antigay discrimination.

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similar questions surrounding the rights of gay and lesbian domestic partners.

In *Lovisi v. Slayton* a federal appeals court rules that the constitutional right to marital privacy doesn't apply to group sex.

In *Rose v. Locke* the Supreme Court summarily rules that cunnilingus is covered by Tennessee's "crimes against nature" statute even though it is not explicitly mentioned in the statute.

In *Singer v. United States Civil Service Commission*, a federal appeals court rules that civilian federal employees can be dismissed for gay-related political activities only if the activities impair the agency's work, not if they merely have the potential to do so. But the court also rules that flaunting one's sexual orientation is forbidden.

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Bryant

After a high-profile campaign led by fundamen-

talist singer Anita Bryant, voters in Dade County, Fla., decide by a 2-1 margin to repeal a gay rights law.

Patrick Kearney and David Hill, two gay men, are arrested in Los Angeles for the dismemberment murders of 28 men found dead in trash bags along freeways.

In *State v. Saunders* the New Jersey supreme court declares the state's fornication law unconstitutional, saying that it violates state and federal privacy guarantees. The decision is one of the first to assert that a state's privacy guarantee can be broader than the federal government's.

In *Board of Education of Long Beach Unified School District v. Jack M.*, the California supreme court rules that an arrest for public gay sex is not necessarily grounds for dismissal of a teacher.

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the broadcast of gay-themed programming.

Under Anita Bryant's spell voters in Eugene, Ore., St. Paul, Minn., and Wichita, Kan., repeal gay rights laws.

The public-interest law firm National Gay Rights Advocates (NGRA) is formed in San Francisco.

The FCC refuses to yank the license of Boston public television station WGBH for airing *Monty Python's Flying Circus*. A citizens group complained that the show "relies primarily on scatology, immodesty, vulgarity, nudity, profanity, and sacrilege for 'humor.'"

In *Smith v. Liberty Mutual Insurance Co.*, a federal appeals court rules that laws against sex discrimination do not prohibit bias against effeminate men.

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phone & Telegraph Co., the California supreme court rules that being openly gay or lesbian on the job is protected by a state law ensuring the right of employees to engage in political causes.

Former San Francisco supervisor Dan White is acquitted of murder in the killings of openly gay city supervisor Harvey Milk and Mayor George Moscone. He's convicted instead of manslaughter after his lawyer argues that his mental capacity was diminished by his consumption of Twinkies and other snacks.



Milk

In *People v. Onofre* the New York State court of appeals voids the state sodomy law, ruling that it violates due-process, equal-protection, and privacy guarantees.

California voters reject the Briggs Initiative, which would have barred gays and lesbians from teaching in public schools.

In *Beller v. Middendorf* a federal appeals court upholds the Navy's discharge of three gay and lesbian sailors.

In *Van Ooteghem v. Gray*, a federal appeals

The Department of Defense revamps its policy on gay and lesbian service personnel. The new policy strictly and unequivocally bars all gays and lesbians from joining the armed forces and requires potential recruits to be questioned about their sexual orientation before signing up.



ELLEN SHUB

O'Connor

Wisconsin enacts the nation's first statewide ban on antigay discrimination.

In *In re Adult Anonymous II*, a New York State appeals court panel allows a gay man to adopt his adult lover. The man had sought to adopt the lover, who was mildly disabled, so they could be legally identified as a family and avoid eviction from their apartment under New York City rent-control laws.

A Los Angeles man files a palimony lawsuit against Liberace. The pianist denies that the

In *People v. Uplinger* the New York State court of appeals voids a law that made it illegal to inoffensively solicit consensual sex "of a deviate nature" in public. The statute had been used primarily against gay men cruising for sex in public places.

In *Sommers v. Iowa Civil Rights Commission*, an Iowa court



MARC GELLER

Silverman

In a controversial attempt to slow the spread of HIV, San Francisco health department head Mervyn Silverman orders the closing of 14 gay bath-

'80

court rules that free-speech rights bar public employers from keeping their employees from supporting gay rights causes on their own time.

In *Fricke v. Lynch* Rhode Island high school student Aaron Fricke obtains a court order allowing him to take a male date to his prom.

In *Bezio v. Patenaude* the Massachusetts supreme judicial court rules that a biological mother may not be denied custody of her children merely because she is a lesbian. The court's ruling applies only to Massachusetts, however.

In *Commonwealth v. Banadio* the Pennsylvania supreme court voids the deviate-sexual-intercourse convictions of exotic dancers who had oral sex with patrons as part of their act.

'81

President Ronald Reagan appoints Arizona jurist Sandra Day O'Connor to the Supreme Court. She is the Court's first female justice. Meanwhile, California governor Jerry Brown appoints openly lesbian attorney Mary Morgan to a superior court judgeship, making her the nation's first openly lesbian judge.

A female lover files a palimony suit against tennis star Billie Jean King, who says she is heterosexual but acknowledges having had a relationship with the woman.

Californian Timothy Curran sues the Boy Scouts of America for ousting him because of his homosexuality. Thirteen years later the case is still in the courts.

In *Florida Board of Bar Examiners re N.R.S.*, the Florida supreme court rules that private, consensual sexual conduct of bar applicants is not relevant to fitness to practice law.

'82

man was his lover, and the suit is eventually settled out of court.



Liberace

Federal appeals courts send mixed signals over sexual orientation and immigration law. In *Hill v. U.S. Immigration and Naturalization Service*, a court rules that a 19th-century policy denying visas to gays and lesbians (including them in the broad category of "psychopaths") violates free-association rights. But in *In re Longstaff*, another court upholds the policy. Congress rewrites the policy in 1990.

'83

rules that the firing of a preoperative male-to-female transsexual for using the women's rest room at work does not constitute illegal sex discrimination.

In *In re Reed* the California supreme court ends

the state's long-standing practice of permanently tracking people convicted under misdemeanor solicitation, lewdness, and sodomy statutes. Under the practice, offenders—primarily gay men ensnared in raids on public rest rooms—were required to register changes of address with the state department of justice and provide fingerprints and photos to local law enforcement officials.

'84

houses after investigators repeatedly observe high-risk sexual behavior in them. The bathhouses fight the order, but the courts back Silverman up.

In *Ulane v. Eastern Airlines Inc.*, a federal appeals court upholds the firing of a male-to-female transsexual who as a man was a Vietnam War hero and commercial airliner pilot. Federal law prohibiting sex discrimination doesn't apply to transsexuals, the court rules.

In *Dronenburg v. Zech* a federal appeals court upholds the discharge of a soldier who admitted to having had gay sex in his barracks.

In *Rowland v. Mad River Local School District*, a federal appeals court upholds the dismissal of an Ohio public-school guidance counselor because she told colleagues she was bisexual.

At the prodding of Gov. Michael Dukakis, the Massachusetts department of human services devises a hierarchy for the evaluation of adoption applications. Married heterosexual couples are placed at the top, while single people and gay and lesbian couples are relegated to the bottom.

Released from prison, Dan White kills himself.

In *Olivieri v. Ward* a federal appeals court refus-



Protesting the *Hardwick* ruling

In *Bowers v. Hardwick* the Supreme Court finally speaks on sodomy laws—and the result is a big setback for gay rights. A bitterly divided court upholds the constitutionality of the laws, sparking a rash of protests.

Attorney general Edwin Meese's blue-ribbon panel on pornography concludes that use of sexually explicit materials

Judge Robert Bork, who outlined his opposition to gay rights in the 1984 *Dronenburg* decision, is tapped for the Supreme Court. His nomination is rejected.

Delta Air Lines publicly apologizes for arguing in plane-crash litigation that it should pay less in compensation for the life of a gay passenger than for a heterosexual one because he may have had AIDS.

In *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, a federal appeals court rules that a Washington,

Oregonians surprise the rest of the nation by voting in a referendum to repeal Gov. Neil Goldschmidt's year-old ban on antigay job discrimination. The victory will

DONNA BINDER/IMPACT VISUALS



Mabon

embolden the referendum's backer, archconservative Lon Mabon, to

In *Braschi v. Stahl Associates Co.*, the New York State court of appeals rules that domestic partners of gays and lesbians should be considered family members under New York City rent-control and rent-stabilization laws.

After months of intense criticism from the media and the departure of three top staffers, high-profile NGRA head Jean O'Leary resigns.

In *Watkins v. United States Army*, a federal appeals court orders the reinstatement of an openly gay soldier whose commanding officers—

'85

es to allow the gay Roman Catholic group Dignity to stage a demonstration outside St. Patrick's Cathedral during New York City's gay pride march.

In *Roe v. Roe* the Virginia supreme court strips a gay father of custody of his daughter, ruling that "continuous exposure of the child to his immoral and illicit relationship [with his lover] renders him an unfit and improper custodian."

In *Baker v. Wade* a federal appeals court dissolves a district judge's decision voiding the state's misdemeanor sodomy law, apparently leaving the law in force.

In *Madsen v. Erwin* the Massachusetts supreme judicial court upholds a Christian Science Church policy barring the employment of gays and lesbians.

'86

is linked to violent crime. The report presages a federal crackdown on pornography.

Closeted gay attorney Roy Cohn dies of complications related to AIDS, insisting to the end that he doesn't have the disease.

The justice department drops its policy of asking prospective prosecutors if they are gay or lesbian.

Californians reject an initiative that would quarantine people with AIDS.

In *Daly v. Daly* the Nevada supreme court rules that a father's parental rights may be terminated when he has a sex change.

In *D.C. and M.S. v. City of St. Louis*, a federal appeals court rules that a drag show performed by dancer Michelle Mouth did not violate a city indecency ordinance.

'87

D.C., gay rights ordinance requires religious schools to provide benefits and services to gay student groups. Congress later exempts religious schools from the ordinance.

The New Hampshire supreme court OK's a newly passed law barring gays and lesbians from adopting children, becoming foster parents, or running child-care agencies.

In *Blackwell v. United States Department of the Treasury*, a federal appeals court rejects a fired civil servant's argument that his transvestism is a disability protected by federal anti-bias law.

In *S.E.G. v. R.A.G.* a Missouri appeals court rules that societal prejudice is a sufficient reason to deny child custody to a lesbian mother.

'88

pepper local ballots throughout Oregon with antigay initiatives in the early '90s.

In *Gay and Lesbian Students Association v. Gohn*, a federal appeals court rules that the denial of funding to a gay group at the University of Arkansas violates free-speech rights.

In *Elden v. Sheldon* the California supreme court vacates a loss-of-consortium award to a man whose domestic partner, a woman, was killed in a car accident. Such an award would routinely have been made to a married man whose wife was killed under similar circumstances, and the decision marks a significant turning point in the court's previously liberal attitude regarding domestic partnerships.

'89

aware of his sexual orientation—repeatedly allowed him to reenlist.

A Los Angeles jury awards compensatory damages to an ex-lover of Rock Hudson who said the actor endangered him by not telling



Hudson

him he had AIDS.

In *Price Waterhouse v. Hopkins*, the Supreme Court rules that an accounting firm violated sex-discrimination laws by denying a partnership to a woman because of her masculine behavior.

Cincinnati museum director Dennis Barrie is charged with obscenity for booking a traveling exhibit of works by Robert Mapplethorpe that includes homoerotic photos. He is acquitted.

Massachusetts drops the hierarchical evaluation system that kept gays and lesbians from becoming adoptive and foster parents.

The Americans With Disabilities Act, which prohibits AIDS-based discrimination, is signed into law.

The Supreme Court refuses to hear an appeal

In *In re Guardianship of Sharon Kowalski*, the Minnesota court of appeals awards guardianship of a woman severely injured in an automobile accident in 1983 to her lesbian lover over the objections of the woman's parents. Kowalski's lover, Karen Thompson, had demonstrated she was better able to care for Kowalski, the court ruled.

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Thomas

Colorado voters pass Amendment 2, an addition to the state constitution that would repeal gay rights laws on the books in three cities and prohibit the enactment of such laws in the future. A similar statewide measure fails in Oregon. Implementation of the Colorado measure is delayed while it's challenged in the courts.

NGRA—once one of the nation's wealthiest gay groups but now more than \$200,000 in debt—ceases operations.

Aileen Wuornos, said to be America's first lesbian serial killer, is sentenced

Trying to keep a campaign promise, President Clinton announces days after his inauguration that he'll lift the Pentagon's ban on gay and lesbian service personnel. He immediately hits a congressional brick wall, waffles for six months, and finally announces the "don't ask, don't tell" plan, a so-called compromise that differs little from the original ban.

The Hawaii supreme court sparks hope that it will approve same-sex marriages when it rules that a lower court improperly dismissed a lawsuit challenging the



Bottoms

An appellate judge in Virginia voids a lower-court ruling that stripped lesbian Richmond resident Sharon Bottoms of custody of her 2-year-old child because of her sexual orientation.

The first lawsuits challenging the constitu-

'90

of the dismissal of Miriam Ben-Shalom, discharged from the Army for saying she is a lesbian.

In *Alison D. v. Virginia M.*, the New York State supreme court rules that the former lesbian partner of a child's biological mother has no legal basis to pursue visitation rights. It's one of the first lesbian-versus-lesbian child-custody cases to make it to a state appellate-level court.

In *In re Adoption of Charles B.*, the Ohio supreme court voids a lower court's ruling that adoption by a gay man could never be in the best interest of a child.

In *In re Estate of Cooper*, a Kings County, N.Y., surrogacy court rules that a same-sex domestic partner cannot be considered a spouse for inheritance purposes, at least in New York State.

'91

Judge Clarence Thomas is confirmed as a Supreme Court justice after charges that he sexually harassed a female subordinate bitterly divide the nation.

In *Barnes v. Glen Theatre Inc.*, commonly known as the Kitty Kat Lounge case, the Supreme Court OK's Indiana's ban on nude dancing.

In *Soroka v. Dayton Hudson Corp.*, a California appeals court rules that requiring job applicants to take psychological tests that include questions about sexual orientation violates their privacy rights.

In *Schowengerdt v. United States*, a federal appeals court refuses to reinstate a civilian defense worker who was fired after supervisors found swinger magazines and evidence of his bisexuality in his desk.

'92

to death in Florida.



Wuornos

Jeffrey Dahmer is convicted of raping, killing, and cannibalizing 15 young men and boys in Milwaukee.

In *In re Jacobson* the Supreme Court voids the child-pornography conviction of a Nebraska farmer who was ensnared by a federal sting operation.

In *Gay Men's Health Crisis v. Sullivan*, a New York supreme court judge strikes down a congressional ban on federal funding for AIDS education materials that explicitly discuss homosexuality.

'93

state's policy of denying marriage licenses to gay and lesbian couples.

Prosecutors in *California v. Menendez*, the year's hottest murder trial, try desperately to introduce evidence regarding codefendant Erik Menendez's sexual orientation into his parricide trial. They fail but assert in closing arguments that Menendez and his brother killed their parents because they disapproved of Menendez's homosexuality. Jurors fail to reach a verdict.

KEN LEVINE/REUTER



Menendez

'94

tionality of the "don't ask, don't tell" policy are filed.

A bill that would prohibit antigay employment discrimination is introduced in the House of Representatives.

Openly lesbian San Francisco police officer Stephanie Thorne announces a planned sex change, making her the city's first openly transsexual cop.

A gay man in Philadelphia accuses Chicago Roman Catholic cardinal Joseph Bernardin of molesting him as a child but later recants.

John Wayne Gacy, convicted of raping and killing 33 young men and boys in the '70s, is executed in Illinois.

Superior court judges void gay rights ordinances in Atlanta and Minneapolis.